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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 119

LOUISE M. WISSNER AND LEANDOUS H. WISSNER,
Appellants,

v.

MARGARET WISSNER, *Appellee*

APPEAL FROM THE DISTRICT COURT OF APPEAL, STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT

STATEMENT AS TO JURISDICTION

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 119

LOUISE M. WISSNER AND LEANDOUS H. WISSNER,
Appellants,

v.

MARGARET WISSNER, *Appellee*

STATEMENT AS TO JURISDICTION

Statement of the Case

All facts necessary for the determination of the questions involved are admitted in the pleadings (R. 1-7 and 9-12).

Issues involving property other than the proceeds of the National Service Life Insurance policy with which we are concerned have been settled by the decision of the court below.

Appellants are the mother and father of Dr. Leonard O. Wissner who at the time of his death in Kalai Kunda, India, on November 14, 1945, was a Major in the United States Army (R. 14, 16). Appellee is his surviving widow (R. 14).

Dr. Wissner and appellee were married at the City of Glendale, County of Los Angeles, State of California, on the 16th day of August, 1930, and ever since said date and

up to the death of Leonard O. Wissner were husband and wife and at all times subsequent to the marriage and until his death were residents of and domiciled in the State of California (R. 14).

While Dr. Wissner was serving in the army, he applied for and there was issued to him a National Service Life Insurance policy No. 14N8656931 (R. 3, 10), the premiums of which were paid by Dr. Wissner from his army pay (R. 10, 17). He designated his mother, Louise M. Wissner, as principal beneficiary of the policy and his father, Leandous H. Wissner, as contingent beneficiary (R. 17). The policy was in full force and effect at the time of the Doctor's death (R. 30) and since that time the Doctor's mother, appellant, Louise M. Wissner, has received funds amounting to $76.70 for each month (R. 18).

Appellee claims to be entitled to one-half of this payment as received each month under the community property laws of the State of California. The state courts found in favor of appellee's claim and refused to apply the provisions of the federal statutes which control the rights in the proceeds of National Service Life Insurance (R. 19).

The matter is of great importance to the residents of the eleven community property states since, as the court will take judicial notice, millions of government life insurance policies were issued to members of the armed forces in the first and second world wars and a majority of the men taking out these policies are now or will be married and many may desire to designate someone other than their wife as beneficiary of their insurance. The decision of the court below nullifies the clear intent of one soldier in this regard and thereby seriously circumscribes the value of government life insurance to many present and prospective owners.

To counsels' knowledge ten cases[1] involving this question have been filed in the County of Los Angeles alone, and if the decision of the court below is correct, there will be hundreds of new cases filed because the United States is paying money every day to the designated beneficiaries of these insurance policies and ignoring the claimed rights of widows in one-half the payments as community property.

Opinion Below

The Superior Court rendered no opinion; its findings of fact, conclusions of law and judgment are at (R. pp. 27-38). The opinion of the District Court of Appeal (Appendix A) filed January 21, 1949, is reported in 89 A. C. A. 857, 201 Pacific 2d 837. The Appellate Court denied rehearing without opinion (R. 36). The Supreme Court of California denied a hearing without opinion (R. 37).

Statutory Provisions Sustaining Jurisdiction

The statutory provisions believed to sustain the jurisdiction of this court are Title 28, U. S. Code, Section 1257 (1) and (2) and under the authority of *Prudential Ins. Co.* v. *Cheek*, 259 U. S. 530, 547, and *Flournoy* v. *Weiner*, 321 U. S. 253, 263, the right to a review of the judgment of the lower court by writ of certiorari under Title 28, U. S. Code, Section 1257 (3) is also presented herein.

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[1] *James* v. *United States, et al.*, No. 6061-BH (S. D. Cal.); *Barton* v. *United States, et al.*, No. 5527-WM (S. D. Cal.) 75 Fed. Supp. 703; *Rhodes* v. *United States of America, et al.*, No. 5845-B (S. D. Cal.); *Hayek* v. *Hayek and the United States of America*, No. 7400-W (S. D. Cal.); *Angel L. Pack* v. *United States of America and Lilly Pack*, No. 7651-BH (S. D. Cal.) Appealed to the Ninth Circuit; *Nobles* v. *Cannell*, No. 502587, Superior Court in and for the County and City of Los Angeles; *Johnson* v. *Shelton*, No. 522648, Superior Court in and for the County and City of Los Angeles; *Carballo* v. *McFann*, No. 543410, Superior Court in and for the County and City of Los Angeles; *Cora Belle Bennett* v. *Modesta Lee Bennett*, No. 503386, Superior Court in and for the County and City of Los Angeles; *Amy Jean Dodart* v. *United States, et al.*, 8201-WM (S. D. Cal.).

Statutes Involved

The federal statute, the provisions of which were held inapplicable and void is Section 3, 49 Statute 609, 38 U. S. C. A. Section 454a, Act of August 12, 1935, Chapter 510:

> "Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and *shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary* • • •" (Italics ours.)

The provisions of the state statute which the court applied and which appellants claim are inapplicable to the case and void as applied by the lower court to the property involved are Civil Code of California, Sections 162, 163, 164, 161a.

> Section 162. "All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property."

> Section 163. "All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property."

> Section 164. "All other property acquired after marriage by either husband or wife, or both, including real property situated in this State and personal property wherever situated, heretofore or hereafter acquired while domiciled elsewhere, which would not have been the separate property of either if acquired while domiciled in this State, is community property; • • •"

> Section 161a. "The respective interest of the husband and wife in community property during continuance of the marriage relation are present, existing and equal

interest under the management and control of the husband as is provided in sections 172 and 172a of the Civil Code. This section shall be construed as defining the respective interests and rights of husband and wife in the community property."

Date of Judgment and Application for Appeal

The decision and judgment of the District Court of Appeal were filed January 21, 1949 (R. 23). A petition for rehearing was denied February 11, 1949 (R. 36).

The District Court of Appeal is the highest court of the State in which decision could be had unless a hearing were granted by the Supreme Court of California at its discretion (Constitution of California, Article VI, Secs. 4, 4a, 4b, 4c). A hearing was denied March 21, 1949 (R. 37).

The application for appeal was presented May 16, 1949.

Cases Believed to Sustain Jurisdiction of this Court

Cases believed to sustain the jurisdiction of this court are:

Logan County National Bank v. *Townsend*, 139 U. S. 67, 72;

Toledo etc. Railroad Company v. *Slavin*, 236 U. S. 454, 457;

Green Bay Canal Co. v. *Patten Paper Co.*, 172 U. S. 58, 66;

Missouri etc. R. Co. v. *Haber*, 169 U. S. 613, 621-622;

McGuire v. *Massachusetts*, 3 Wall. 382, 385;

Garrett v. *Moore-McCormack*, 317 U. S. 239, 245-246;

Flournoy v. *Weiner*, 321 U. S. 253, 263;

Anderson v. *Carkins*, 135 U. S. 483, 485, 486;

Clearfield Trust Co. v. *United States*, 318 U. S. 363, 366;

United States v. *Emory*, 314 U. S. 423, 426-427.

Raising the Federal Questions

Appellants raised the federal questions in their answer (R. 18) pressed them throughout the case, argued them in all briefs on appeal[2] and the federal questions were expressly passed on by the District Court of Appeal of the State of California Third Appellate District (Appendix A pages 14-26 herein) (R. 70-84).

The Appellate Court in its opinion summarizes appellants' contentions made in their briefs and argument on appeal as follows:

> "Appellants contend, however, that rights to the proceeds of a National Service Life Insurance policy must be determined solely by federal statutes. They cite section 802 (g) of Title 38 U. S. C. A. which provides, regarding such policies: 'The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent (including person in loco parentis if designated as beneficiary by the insured), brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided.'
>
> "They particularly rely upon section 454a of the World War Veterans' Relief Act, Title 38 U. S. C. A., which provides in part: 'Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, *shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or*

[2] Under the California practice, an appeal is taken merely by notice (R. 40) and there is no assignment of errors. The questions presented on appeal are stated only in the briefs.

seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.' (Italics added.)

"And they assert that Congress by the foregoing enactment not only intended to control the proceeds of such policies after they were paid to them, but that its power to do so is found in the provisions of the United States Constitution, art. I, § 8, granting to Congress the power to 'provide for the common Defense and general Welfare of the United States,' to 'raise and support Armies,' to 'provide and maintain a Navy', to make rules and regulations for the government and regulation of the land and naval forces, and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers. They also rely upon art. VI, paragraph 2, of that Constitution providing that such Constitution and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution and laws of any state to the contrary notwithstanding" (Appendix A, pp. 18-19) (R. 75-76).

The court below affirmed the judgment of the lower court awarding one-half of the proceeds of the National Service Life Insurance policy to appellee in these words:

"In the case before us the judgment was entered against the beneficiaries for one-half of the payments on the policy which they had already received, and they were ordered to pay to plaintiff one-half of proceeds received by them. Such judgment is fully in accord with the judgments in the Cooke case and other cases above cited, and cannot be said to infringe upon any rights or powers of the United States under the provisions of the United States Constitution relied upon by appellants" (Appendix A, p. 22) (R. 86).

The court stated that the question to be decided on appeal was:

"The question before us, then, is did Congress intend, by section 454a, supra, to provide that the

proceeds of a National Service Insurance policy, after payment of same to a named beneficiary, are not subject to the laws of a state governing title to property within that state, and, if it did so intend, had it the power under the Constitution to so provide, and thus divest a wife in California of property rights which under the laws of this state are community property in which such wife has a vested interest" (Appendix A., pp. 19-20) (R. 77).

and in deciding the question said as follows:

"Reasoning from the foregoing cases, the conclusion seems to follow that, in view of the Fifth Amendment, the federal government *had no power to provide*, as it is contended it did in section 454a, supra, that payments made to a beneficiary of a National Service Life Insurance policy shall be exempt from the claims of the widow of the deceased insured to the right vested in her under the laws of this state to one-half of such payments *after* their receipt by the beneficiary" (Appendix A, p. 22) (R. 79). (First italics ours.)

and continued as follows:

"As hereinbefore stated, appellants rely upon art. VI, paragraph 2, and art. I, sec. 8, of the United States Constitution. But no cognizance is taken of the Fifth Amendment, which limits the power of the Federal government as the Fourteenth Amendment limits those of the states, and prohibits the taking of private property without due process of law. It therefore seems to follow that if, as decided in Cooke *v.* Cooke, supra, a surviving wife of a decedent who had paid for an insurance policy out of community funds could not be deprived of her vested interest in the proceeds of such policy without violating the provisions of the Fourteenth Amendment, the Federal government could not deprive a wife of the deceased veteran of her vested right to one-half of the proceeds of a National Service Life Insurance policy paid for out of community funds, at least after such funds had come into the possession of

a named beneficiary other than the wife, without violating the Fifth Amendment" (Appendix A, p. 22) (R. 79-80).

and the court below expressly disagreed with the decision of a Federal District Court in this state which had held that the Federal statutes relied upon by the appellants controlled the rights in the proceeds of a National Service Life Insurance policy and that the California community property laws were not applicable and in disagreeing with the Federal Court said:-

"appellants cite numerous cases which, they contend, sustain their position; but, with one exception, none of them involved divestiture of vested rights in community property. Assuming, but not deciding, the correctness of such decisions, they do not determine the issues in this case, nor is it necessary herein to determine to what extent the Congress could, under its limited powers, exercise control over the proceeds of National Service Life Insurance policies prior to their receipt by the beneficiaries. The exception above mentioned is Barton *v.* United States, D. C., 75 F. Supp. 703, in which a widow of a deceased veteran applied to the Administrator of Veterans' Affairs to pay to her a one-half interest in the portion of the proceeds of an insurance policy which had resulted from the payment of premiums out of community funds of the spouses. The claim was disallowed and payments were made to the named beneficiary, decedent's mother. It may be conceded without affecting the conclusion in the case before us, that the Administrator properly so acted pursuant to the terms of the policy, which was a contract between the United States and the insured, and that the trial court properly concurred in his decision. The Barton decision is not, of course, conclusive upon this court; and we think it is clearly distinguishable in so far as the necessities of that case were determined. But if, as some of the language of the opinion indicates, that court decided that because

of the provisions of section 454a, supra, the Congress intended to and did attempt to provide that where premiums on a National Service Life Insurance policy are paid for out of the community property, in which, under the laws of California, a wife has a vested interest, it must follow that the widow of decedent may be divested of her community property right by the action of the husband in using such funds for payment of premiums on such insurance without her knowledge or consent, and by naming another than the wife as beneficiary deprive the surviving widow of her vested rights and render it impossible for her to enforce her rights against the beneficiaries after their receipt of the proceeds of the policy, then we must respectfully disagree with the Barton case" (Appendix A, pp. 24-25) (R. 82-83).

Grounds Upon Which It Is Contended the Questions Involved Are Substantial

The result of the decision of the court below is to take one-half of the proceeds of a National Service Life Insurance policy, paid and to be paid, to the parents of the deceased soldier as he intended them to be paid and to deliver them to his widow with whom he was estranged. The result is reached by applying the state statutes to the determination of the controversy and refusing to apply the federal statutes which created the insurance and which provide:

> "Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary • • •."

(a) The court below is in direct conflict with basic principles of law followed by this Court in:

White v. *United States*, 270 U. S. 175;

Lynch v. *United States*, 292 U. S. 571, 577-579;
United States v. *County of Allegheny*, 322 U. S. 174, 183;
Clearfield Trust Co. v. *United States*, 318 U. S. 363, 366;
Lawrence v. *Shaw*, 300 U. S. 245;
United States v. *Williams*, 302 U. S. 46;
Erie Railroad Company v. *Tompkins*, 304 U. S. 64 dicta 78, 79;
United States v. *Emory*, 314 U. S. 423;
Tennessee v. *Davis*, 100 U. S. 257, 262-264.

(b) It is also in direct conflict with cases in other jurisdictions construing this act. The following among many others involving government insurance have applied the rules contained in the federal statutes to determine the rights of the parties rather than the conflicting state rules. So far as we are informed, no reported case agrees with the court below:

United States v. *Sterling* (C. C. A. 2), 12 Fed. 2d 921, 922;
Woodward v. *United States* (C. C. A. 8), 167 Fed. 2d 774, 778;
Cassarello v. *United States* (C. C. A. 3), 279 Fed. 396, 398;
United States v. *Fuller* (C. C. A. 5), 97 Fed. 2d 541;
Lewis v. *United States* (C. C. A. 3), 56 Fed. 2d. 563, 564;
Bradley v. *United States* (C. C. A. 10), 143 Fed. 2d 573;
Robertson v. *McSpadden* (Dist. Ct. E. D. Ark. N. D.), 46 Fed. 2d 702;
Tomkins v. *Tomkins*, 132 N. J. L. 217, 38 Atl. 2d 890;
Sizemore v. *Sizemore's Guardian, et al.*, 222 Ky. 713, 2 S. W. 2d 395, 396-7;
Maddox v. *Elliot*, 248 Ala. 271, 27 So. 2d 498, 499;

Murphy v. *United States*, (Dist. Ct. D. Mass.) 5 Fed. Supp. 583, 584;

Washburn v. *United States*, (Dist. Ct. W. D. Mo.) 63 Fed. Supp. 224, 227;

Suttons' Ex'r v. *Barr's Adm'r*, 219 Ky. 543, 293 S. W. 1075.

(c) The decision of the court below is also in direct conflict with cases in California which have applied the federal statutory rules rather than the conflicting state rules.

The section of the statute involved in the case at bar was considered binding and followed in *Culp* v. *Webster*, 25 Cal. App. Supp. 2d 759, 70 Pacific 2d 273.

The decision of the court below is in direct conflict with cases arising in the State of California involving community property; *Barton* v. *U. S.*, 75 Fed. Supp 703—the decision with which the court below respectfully disagrees, *Johnson* v. *Shelton*, No. 522648, Superior Court in and for the County and City of Los Angeles, Memorandum Ruling printed herein, (Appendix B, pp. 26-30) a decision expressly disagreeing with the court below, *James* v. *U. S.*, No. 6061-BH, Southern District of California, an unreported case, Findings of Fact and Conclusions of Law printed herein, (Appendix C, pp. 30-34) *Rhodes* v. *United States, et al.*, No. 5845-B, Southern District of California; *Hayek* v. *Hayek and United States*, No. 7400-W, Southern District of California; *Angel L. Pack* v. *United States and Lilly Pack*, No. 7051-BH, Southern District of California appealed to the United States Court of Appeals for the Ninth Circuit and hearing there had on April 20, 1949. *Nobles* v. *Cannell*, No. 502587, in which the Superior Court for the County and City of Los Angeles made among others the following conclusion:

"the community property laws of the State of California confer no rights on plaintiff to share in the pro-

ceeds of the policy involved in this action since it was the purpose of the Congress of the United States to provide in all details for the issuance and administration and settlement of National Service Life Insurance on a National basis, and state laws or their administration may not interfere with the carrying out of a National purpose."

Conclusion

We respectfully submit that this Court has jurisdiction of the appeal.

Dated: May 16, 1949.

Respectfully submitted,

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Vernon F. Gant,
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Counsel for Appellants.

APPENDIX A

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA IN AND FOR THE THIRD APPELLATE DISTRICT

(Stanislaus)

Civ. No. 7528

Sac. No. 5936

MARGARET V. WISSNER, *Plaintiff and Respondent*,

vs.

LOUISE M. WISSNER and LEANDOUS H. WISSNER, *Defendants and Appellants*

Filed: Jan. 21, 1949

Plaintiff, respondent before this court, brought this action against Louise and Leandous Wissner, the parents of plaintiff's deceased husband, Leonard O. Wissner. The complaint alleged that plaintiff and said decedent were married in California in 1930; that at the time of said marriage decedent had no property and that all property which he thereafter acquired was community property acquired by the joint efforts of the spouses; that Leonard died testate on November 14, 1945, leaving plaintiff as his surviving widow; that during the marriage the husband Leonard made transfers of community property to defendants, consisting of money, stocks, bonds and an automobile, without plaintiff's knowledge or consent and without consideration, and as a result plaintiff was defrauded of her community interest in such transferred assets; and that defendants refused to account to plaintiff for such assets and claimed to be the owners thereof, though they were without right, title or interest therein or thereto.

In a second count plaintiff alleged that decedent had served in the army for several years prior to his death, and had taken out a National Service Life Insurance Policy in the sum of $10,000.00; that he had paid the premiums thereon from his salary, which was community property, but had, without plaintiff's knowledge or consent, made his

mother principal beneficiary and his father contingent beneficiary thereof; and that since the death of plaintiff's said husband defendants had received from the proceeds of said policy $882.05, but refused on demand to pay to plaintiff any portion thereof.

A third cause of action was stated, but it is not involved in this appeal.

As an answer to plaintiff's first cause of action defendants set up that moneys which decedent had paid over to them had been paid to them to satisfy a debt of decedent to them for aid and assistance which they had given him during his attendance at medical school. As for the second cause of action, they conceded that premiums on the life insurance policy had been paid with community funds, but alleged that the proceeds of such policy were payable to them alone by virtue of the federal statutes governing the issuance of such policies, and that such statutes alone controlled, and prohibited plaintiff from claiming any interest therein.

After trial of the issues findings were made in favor of plaintiff on the first and second causes of action; and from the judgment which followed defendants have appealed, raising two issues, the first, whether the evidence supports the finding that the transfers to defendants were without consideration; and, second, whether the community property law of California gives plaintiff a right to any part of the proceeds of the life insurance policy.

We are satisfied that there is sufficient evidence to support the conclusion of the trial court on the first count. Defendants admitted that during his service in the army, decedent, who was first a captain and then a major, had paid to them approximately $3000 in cash, and that he transferred to them an automobile which had been purchased in 1939. The moneys turned over were deposited in a joint bank account in the names of defendants and decedent, upon which both decedent and defendant Louise Wissner drew checks. After Leonard's death the defendants withdrew the balance remaining in the account. The automobile pink slip was received by defendants from their son in the fall of 1943, and they sold the automobile after his death for $1080.00.

In a letter written by Leonard from India on October 22, 1944, beginning "Dear Folks All," which letter was delivered to the Bank of America, Modesto, by defendants, he stated that he had already sent a check for $30.00 and was enclosing another for $90.91. He then added: "I want a bank account, probably commercial, to be held jointly by you folks and by me. I want the allotments to be deposited in it. I want a reserve of $250 to $500 to be allowed to accumulate and the bonds to be purchased as I previously instructed them, and turned over to you for safekeeping. I want a routine accounting sent to you and referred to me as you think best or necessary. I would like to have a check book sent me in case of need. Please make this all very clear to the bank. Present this letter if necessary." The evidence shows that the joint account between the defendants and their son was opened November 10, 1944, with an initial deposit of $337.50. Thereafter 12 deposits of like amounts were made through allottments by decedent directly to the bank, and there were others. Decedent from time to time drew upon the account and once his mother drew $500 and sent it to him. After Leonard's death she withdrew the balance and deposited it in defendants' own account with the American Trust Company. The Bank of America account was then closed.

Mrs. Wissner testified that $2906.27 and the money for the automobile was all defendants received. She stated that prior to the time this account was opened the bank had been buying bonds for decedent out of funds sent it by Leonard, which bonds were in the names of decedent and one Naomi Beiler; that the bank had mailed the bonds to defendants who had put them in a safe deposit box, and after Leonard's death, had turned them over to the attorney for his estate.

Plaintiff testified that she and Leonard were married in 1930, before the latter had completed his medical training. She was a nurse, and continued to practice her profession, her earnings being put into a joint account with her husband, which account continued until November, 1944, at which time Leonard withdrew all of the balance. Regarding the automobile turned over to defendants, she stated that she finished payments thereon after her hus-

band went into the service. For six months after he went into the service plaintiff received an allotment of $90 per month, then it was discontinued.

Lloyd Wissner, brother of Leonard, testified regarding letters which he received from Leonard. One, dated September 26, 1943, requested Lloyd to get the doctor's instruments and equipment moved "before M. receives the notice that I have stopped her allotment." In another dated January 7, 1943, he stated that he wished his attorney could get an insurance policy away from plaintiff. In one dated September 14, 1943, Leonard mentioned "Naomi," and stated that he wished he could find some way of forcing plaintiff to a settlement and a divorce. Another dated August 24, 1943, referred to efforts to get the pink slip for the automobile away from plaintiff and referred to exerting pressure upon her. In another dated August 14, 1943, he stated he stopped the allotment to Margaret to force her to come to terms. Also he stated that he was enclosing the pink slip to the automobile, saying, "Possibly it would be best to have it transferred to you and then no one could touch it." On June 19, 1945, he referred to the automobile, stating Lloyd could continue to use it, "at any rate for the time being"; and in another dated July 21, 1945, decedent again expressed his wishes regarding the car.

Mrs. Louise Wissner testified regarding moneys sent to Leonard while he was in Medical school in 1927 and 1929, but she was unable to state the amount thereof. She also introduced letters from Leonard sent while still in training, expressing thanks for money received, and making vague statements such as, "Maybe some day we can make things right." At the time the bank account was directed to be opened in 1944 it was directed that the parents continue the purchase of bonds; but that was not done.

The testimony of defendant Leandous Wissner was indefinite and vague, both as to moneys sent to Leonard while at school, the amount thereof, and any promises to repay; and there is no evidence that any statement was ever sent him, or any payments made by him on account of same.

From the evidence in the case and the inferences deducible therefrom, the trial court's findings in favor of plaintiff are fully justified. Evidence and presumptions

contra merely created a conflict which that court was authorized to resolve; and with its conclusions this court may not interfere. Furthermore, we think it is apparent that the transfers made to defendants were not made with an intent to repay them for moneys expended for his medical education, but were made in order to prevent his wife from receiving them, and to force her into a divorce and settlement to further plans which decedent was making for his future from which she was to be excluded.

Regarding the right of plaintiff to recover from defendants a portion of the proceeds of the life insurance policy, it is not denied that premiums paid by decedent were paid from community funds; and that plaintiff had a vested interest in one-half of such community property cannot be gainsaid. (Civ. Code, sec. 161a.) In Mazman *v.* Brown, 12 Cal. App. 2d 272, 273, it was held that where insurance on a husband's life was bought and paid for with community funds, the husband could give away no more than one-half of the proceeds without the written consent of the wife. Numerous authorities so holding were there cited. Also see Grimm *v.* Grimm, 26 Cal. 2d 173, 175. From those decisions it is obvious that had the policy been issued by a private insurance company, no question of plaintiff's right to one-half of the proceeds could arise.

Appellants contend, however, that rights to the proceeds of a National Service Life Insurance Policy must be determined solely by federal statutes. They cite section 802(g) of Title 38 U. S. C. A. which provides, regarding such policies:

> "The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent (including person in loco parentis if designated as beneficiary by the insured), brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided."

They particularly rely upon section 454a of the World War Veterans' Relief Act, Title 38 U. S. C. A., which provides in part:

> "Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, *shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.*" (Italics added.)

And they assert that Congress by the foregoing enactment not only intended to control the proceeds of such policies after they were paid to them, but that its power to do so is found in the provisions of the United States Constitution, art. I, § 8 granting to Congress the power to "provide for the common defense and general welfare of the United States," to "raise and support armies," to "provide and maintain a Navy," to make rules and regulations for the government and regulation of the land and naval forces, and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers. They also rely upon Art. VI, paragraph 2, of that Constitution providing that such Constitution and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution and laws of any state to the contrary notwithstanding.

However, the foregoing declarations are all subject to the limitations imposed by the Tenth Amendment, to wit, that the powers of the Federal government are only such as are delegated and all other powers, except such as are specifically denied to the states, repose in the states and not in the Federal government; and the Fifth Amendment, providing that the Congress shall not deprive any person of life, liberty or property without due process of law, nor take his property for public use without just compensation.

The question before us, then, is did Congress intend, by section 454a, supra, to provide that the proceeds of a

National Service Insurance policy, after payment of same to a named beneficiary, are not subject to the laws of a state governing title to property within that State, and, if it did so intend, had it the power under the Constitution to so provide, and thus divest a wife in California of property rights which under the laws of this state are community property in which such wife has a vested interest.

It cannot be denied that since the enactment of section 161a of the California Civil Code in 1927, a wife in this state has a vested interest in one-half of the earnings of the spouse since that date. Such rights have been recognized by both federal and state courts. See Lang *v.* Commissioner of Internal Revenue, 304 U. S. 264, 82 L. Ed. 1331, 1336; United States *v.* Malcolm, 282 U. S. 792, 75 L. Ed. 714; Commissioner of Internal Revenue *v.* Harmon, 323 U. S. 44, 89 L. Ed. 60, 63, 67; Poe *v.* Seaborn, 282 U. S. 101, 75 L. Ed. 239, 243; United States *v.* Pettigrew, 81 Fed. 2d 666.

In Mundt *v.* Connecticut Gen. Life Ins. Co., 35 Cal. App. 2d 416, 421, decedent's mother was designated as the beneficiary of a life insurance policy paid for with community earnings. A judgment awarding one-half the proceeds to the widow was affirmed, the court saying:

> "From the leading case of New York Life Ins. Co. *v.* Bank of Italy, 60 Cal. App. 602 (214 Pac. 61), through the many intervening cases, down to Travelers Ins. Co. *v.* Fancher, 219 Cal. 351 (26 Pac. (2d) 482), the only test applied to this problem has been whether the premiums (on a policy issued on the life of a husband after coverture) are paid entirely from community funds. If so, the policy becomes a community asset and the non-consenting wife may recover an undivided one-half thereof 'without regard' (as said in Dargie *v.* Patterson, 176 Cal. 714, 721, 169 Pac. 360) 'to the amount or condition of the estate remaining in his (the husband's) hands at the time of his death', and we might add, without regard to the disproportionate size of the premium when compared with the face of the policy."

In Bazzell Endriss, 41 Cal. App. 2d 463, the trial court found that the naming of the mother of an insured husband

as beneficiary of his life insurance constituted a voluntary gift without valuable consideration, and was supported by evidence which showed that the premiums were paid from the husband's earnings during coverture and that at no time did his wife consent to a gift of her community interest in the policy. (See Civ. Code, secs. 161a, 172.)

In Grimm *v.* Grimm, 26 Cal. 2d 173, the court said that where premiums on an insurance policy issued on the husband's life are paid with community funds, the policy is community property; and that "It is settled that even though the insurance contract may provide that the insured husband has the right to change the beneficiary without the wife's consent where she is named as such, any change of beneficiary without her consent and without a valuable consideration is voidable, and after the death of the husband the wife may maintain an action for community share in the proceeds of the policy. (Mazman *v.* Brown, 12 Cal. App. 2d 272, 275 (55 P. 2d 539); Travelers Ins. Co. *v.* Fancher, supra (219 Cal. 351), at p. 356; Dixon Lumber Co. *v.* Peacock, 217 Cal. 415, 418 (19 P. 2d 233); Blethen *v.* Pacific Mut. L. Ins. Co. supra (198 Cal. 91), at p. 101; see 3 Cal. Jur. 10-yr. Supp. 622; 114 A. L. R. 545, 554.)"

The principles set forth in the foregoing cases are reiterated in Pacific Mutual Life Insurance Co. *v.* Cleverdon, 16 Cal. 2d 788, 792, though the decision in that case was different because it was found that the earnings out of which the premiums were paid were not community property, and that they were applied to the premiums with the knowledge and consent of the surviving spouse of the insured.

Also see In re Towey's Estate (Wash.), 155 Pac. 2d 273, 275; In re Miller's Estate (N. Mex.), 100 Pac. 2d 908, 910; Blackmon *v.* Hansen (Tex.), 169 S. W. 2d 962, 965.

In Cooke *v.* Cooke, 65 Cal. App. 2d 260, 266, 269, 272 (hearing in Supreme Court denied) it was held that where premiums on an insurance policy were paid by the husband out of community funds (the earnings of the husband) the wife had a vested interest in the portion of the insurance purchased by such community funds, and was entitled to at least a proportionate amount of the proceeds of the policy paid for with community funds; and that to deprive her of it by a legislative act would be to deprive her of a vested

property right of which she could not be divested without due process of law; that to do so would violate the Fourteenth Amendment to the Federal Constitution, and section 13 of Art. I of the California Constitution.

Reasoning from the foregoing cases, the conclusion seems to follow that, in view of the Fifth Amendment, the Federal government had no power to provide, as it is contended it did in section 454a, supra, that payments made to a beneficiary of a National Service Life Insurance Policy shall be exempt from the claims of the widow of the deceased insured to the right vested in her under the laws of this state to one-half of such payments *after* their receipt by the beneficiary. As hereinbefore stated, appellants rely upon Art. VI, paragraph 2, and Art. I, sec. 8, of the United States Constitution. But no cognizance is taken of the Fifth Amendment, which limits the power of the Federal government as the Fourteenth Amendment limits those of the states, and prohibits the taking of private property without due process of law. It therefore seems to follow that if, as decided in Cooke *v.* Cooke, supra, a surviving wife of a decedent who had paid for an insurance policy out of community funds could not be deprived of her vested interest in the proceeds of such policy without violating the provisions of the Fourteenth Amendment, the Federal government could not deprive a wife of the deceased veteran of her vested right to one-half of the proceeds of a National Service Life Insurance policy paid for out of community funds, at least after such funds had come into the possession of a named beneficiary other than the wife, without violating the Fifth Amendment.

In the case before us the judgment was entered against the beneficiaries for one-half of the payments on the policy which they had already received, and they were ordered to pay to plaintiff one-half of proceeds received by them. Such judgment is fully in accord with the judgments in the Cooke case and other cases above cited, and cannot be said to infringe upon any rights or powers of the United States under the provisions of the United States Constitution relied upon by appellants.

As said in 6 R. C. L., sec. 436, pp. 440:

"The requirement of due process of law was introduced into the constitution of the United States by the fifth amendment as a limitation upon the powers of the national government, and by the fourteenth amendment as a guaranty against any encroachment upon an acknowledged right of citizenship by the legislatures of the states."

As to the limits of the powers of Congress, in 1 Cooley's Constitutional Limitations, Eighth Edition, 11, the author says;

"The government of the United States is one of *enumerated powers;* the national Constitution being the instrument which specifies them, and in which authority should be found for the exercise of any power which the national government assumes to possess."

It is said in 11 Am. Jur., sec 334, p. 1143, that: "The Fifth Amendment to the Federal Constitution prevents the Federal Government or its agencies from depriving any person of his property without due process of law. The Fourteenth Amendment to the Federal Constitution, and all the various state Constitutions, prevent any action by a state which would accomplish such deprivation." And in 12 Am. Jur., Sec. 569, p. 262, we find that: "The effect of the guaranty (of the Fifth and Fourteenth Amendments) is to inhibit the taking of one person's property and giving it to another, contrary to settled usages and modes of procedure, without notice and opportunity for a hearing. *An attempt by statute to work such a change of ownership would be a glaring violation of this guaranty and could not be defended as an exercise of the police power.* (Italics added.)

"The protection extends to rights, in the broadest sense of the term. In the determination of whether the requirement has been observed, regard must be had to substance rather than to form, for the mere form of the proceeding cannot convert the process used into due process of law, if the necessary result is illegally to deprive a person of his property without compensation." See Ochoa *v.* Hernandez y Morales, 230 U. S. 139, 57 L. Ed. 1427; Curry *v.* McCanless, 307 U. S. 357, 83 L. Ed. 1339. Also see 16 C. J. S.,

sec. 602, p. 1205, stating that "a denial of due process of law results from any statute, whether state or federal, which takes away any of the essential attributes of private property, . . ." (citing Ferris *v.* Wilbur, 27 Fed. 2d 262); and C. J., secs. 486, 487, pp. 956, 957.

In United States *v.* Cohen Grocery Co., 255 U. S. 81, 65 L. Ed. 516, 14 A. L. R. 1045, it was said that a state of war could not suspend or change the operation upon the power of Congress of the guarantees and limitations of the Fifth Amendment (with citations). Also see Hamilton *v.* Kentucky Distilleries & W. Co., 251 U. S. 146, 155, 64 L. Ed. 194, 199. The same rule is stated in Darlington *v.* Board of Councilmen (Ky.), 140 S. W. 2d 392, 396 (citing the Cohen case, supra), and in Henderson *v.* Bryan, 46 Fed. Supp. 682, 684, and Schatte *v.* International Alliance, etc., 70 Fed. Supp. 1008, 1010 (decided by the same court that decided the Barton case, infra).

Appellants cite numerous cases which, they contend, sustain their position; but, with one exception, none of them involved divestiture of vested rights in community property. Assuming, but not deciding, the correctness of such decisions, they do not determine the issues in this case, nor is it necessary herein to determine to what extent the Congress could, under its limited powers, exercise control over the proceeds of National Service Life Insurance policies prior to their receipt by the beneficiaries. The exception above mentioned is Barton *v.* United States, 75 Fed. Supp. 703, in which a widow of a deceased veteran applied to the Administrator of Veterans' Affairs to pay to her a one-half interest in the portion of the proceeds of an insurance policy which had resulted from the payment of premiums out of community funds of the spouses. The claim was disallowed and payments were made to the named beneficiary, decedent's mother. It may be conceded without affecting the conclusion in the case before us, that the Administrator properly so acted pursuant to the terms of the policy, which was a contract between the United States and the insured, and that the trial court properly concurred in his decision. The Barton decision is not, of course, conclusive upon this court; and we think it is clearly distinguishable in so far as the necessities of that case were

determined. But if, as some of the language of the opinion indicates, that court decided that because of the provisions of section 454a, supra, the Congress intended to and did attempt to provide that where premiums on a National Service Life Insurance policy are paid for out of the community property, in which, under the laws of California, a wife has a vested interest, it must follow that the widow of decedent may be divested of her community property right by the action of the husband in using such funds for payment of premiums on such insurance without her knowledge or consent, and by naming another than the wife as beneficiary deprive the surviving widow of her vested rights and render it impossible for her to enforce her rights against the beneficiaries after their receipt of the proceeds of the policy, then we must respectfully disagree with the Barton case.

Also see Bostrom *v.* Bostrum (N. D.), 236 N. W. 732; Lewis *v.* Lewis, 34 Cal. App. 2d 422, Baker *v.* Tulsa Building & Loan Assn. (Okla.), 66 Pac. 2d 45; Miller *v.* McKenna, 23 Cal. 2d 774, 783.

The one remaining point on this appeal is whether the trial court erred in allowing the plaintiff one-half the value of the automobile at the time it was transferred to appellants, or whether plaintiff was entitled to one-half of the $1080.00 received from sale of same after the death of Leonard Wissner. The trial court found that the value of the car at the time it was transferred to defendants was $1600.00, and awarded plaintiff judgment for one-half of the value thereof. That the said automobile was community property cannot be questioned, since it was paid for with the community earnings of the spouses after their marriage in 1930, including the earnings of plaintiff who made the final payments out of her own earnings after her husband entered the service. She testified that she did not know of the transfer until after the death of her husband, after which she made demand therefor. The trial court found that the transfer was without consideration, and the evidence sustains that finding. It might be questioned, in view of the evidence, whether the decedent ever intended to transfer the ownership of the automobile to his parents at all. However, they assert ownership, and it may be

presumed that such ownership was acquired when the car and pink slip were delivered to them, as there is nothing to show a later acquisition of title. The trial court, then, may well have concluded that it was transferred to them at that time, and when its value was $1600.00. So determining, its finding that plaintiff is entitled to one-half of its value at that time is supported by the record. Defendants knew that it was the community property of plaintiff and their son, and they may be said to have converted it to their own use at the time of the transfer. Section 3336 of the Civil Code thus became applicable as to the amount of recovery from the convertor, to wit, the value of the property at the time of conversion. And if defendants, having notice of plaintiff's rights, as they had, chose to sell the vehicle, they must respond to the owner for its value, regardless of the price at which they chose to sell it. (A. Meister & Sons Co. *v.* Harrison, 56 Cal. App. 679, 681.)

The judgment is affirmed.

Adams, P. J.

We concur:

Peek, J.; Thompson, J.

APPENDIX B

Memorandum Ruling

No. 522,648

In the Superior Court of the State of California, in and for the County of Los Angeles.

Daisy Edda Johnson, plaintiff, vs. Ada Shelton, defendant.

The controversy in this case relates to the relative rights of a widow and a mother of a deceased veteran of World War II to the monthly payments being made by the federal government under a War Service insurance policy. The widow of the veteran contends that while the policy designates the mother as the sole beneficiary, it was taken out during the deceased veteran's marriage to the widow, the

plaintiff here, and hence, under our community laws, she is entitled to reach one-half of the proceeds of the policy by making the mother a trustee thereof for the plaintiff. The mother did not answer the complaint and hence her default was duly entered. Under the law of this state the default operates as an admission by the mother of the truth of the cause of action as set up in the complaint and of every material and traversible allegation therein which is well and properly pleaded, but the default does not admit that the facts alleged are in law sufficient to constitute a good cause of action or to entitle plaintiff to the relief prayed. Moreover, where the cause of action is predicated upon a document the terms of the document control over any contrary averments set forth in the complaint.

The right of the plaintiff to recover is based upon the fact that the community funds of the decedent and the plaintiff, his widow, were used to pay the premiums on the policy issued by the federal government, and hence, under the community laws of this state, of which the decedent was a resident, one-half of the proceeds are payable to the surviving widow. This, of course, is the rule with respect to life insurance policies issued by private corporations. We turn then to consider whether the rule is the same or otherwise with respect to life insurance policies issued by the federal government.

That the rule is otherwise is the holding of Judge Mathes in Barton *v.* United States, 75 Fed. Supp. 703; that the rule is not otherwise is the holding of Presiding Justice Adams in Wissner *v.* Wissner, 89 A. C. A. 857. In view of that conflict of opinion, the question at once is presented whether the Wissner case is a controlling precedent upon this court if there are, as appears to be the case, decisions to the contrary by the Supreme Court of the United States.

In McCulloch *v.* Maryland, 4 Wheaton, 316, Chief Justice Marshall said:

". . . The People of the United States have seen fit to divide sovereignty, and to establish a complex system. They have conferred certain powers on the state governments, and certain other powers on the national government. As it was easy to foresee that questions must arise between these governments thus constituted, it became of great

moment to determine upon what principle these questions should be decided, and who should decide them. The constitution, therefore, declares that the constitution itself, and the laws passed in pursuance of its provisions, shall be the supreme law of the land, and shall control all state legislation and state constitutions which may be incompatible therewith; and it confides to this court the ultimate power of deciding all questions arising under the constitution and laws of the United States. The laws of the United States, then, made in pursuance of the constitution, are to be the supreme law of the land, anything in the laws of any state to the contrary notwithstanding."

In the case before us the policy of insurance was issued by the federal government pursuant to a congressional act. To the extent then that any state law conflicts with this act of Congress it is of necessity void and of no effect. The act in question permitted a veteran to apply for a policy of insurance, but restricted his designations of beneficiaries to certain persons, among others a wife or mother. Likewise the act expressly provides that the proceeds of a policy may be paid only to the beneficiary designated in the policy and that "payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." For this court to impress a trust on the funds as they are received by the mother is to run directly into the teeth of the statute.

It is said, however, in Wissner *v.* Wissner that to deprive a widow of her vested right under state law to receive one-half the proceeds of a federal life insurance policy where the premiums are paid out of community funds is contrary to the Fifth Amendment. But this contention appears to be fully answered by Justice Holmes in speaking for the court in White *v.* U. S., 270 U. S. 175, 70 L. Ed. 530, and by Chief Justice Hughes speaking for the court in Lawrence *v.* Shaw, 300 U. S. 245, 81 L. Ed. 623, neither of which cases are cited in the Wissner case. The White case involved a federal

service insurance policy issued in 1918. Under the act under which the policy was issued a veteran could not designate an aunt along with his mother as a beneficiary as he wished to do. Accordingly, he designated his mother the beneficiary, but left a will providing that one-half of the sums paid to his mother should go to his aunt. Under the statute, as it existed at the time of the veteran's death, the provision in favor of the aunt was unenforceable. However, a year later Congress passed an act amending the statute so as to permit payments to persons in the class of aunts and additionally made the statute retroactive as of the date of the enactment of the original statute pursuant to a reservation contained in the original statute. The court held that the amendment of the statute did not violate any rights of the mother under the Fifth Amendment. The court said: "The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it, and the relation of the government to them, if not paternal, was at least avuncular . . . The only relations of contract were between the government and him. White's mother's interest at his death was vested only so far as he and the government had made it so, and was subject to any conditions upon which they might agree."

In Lawrence *v.* Shaw, *supra*, it was held that the federal government could exempt the proceeds of a veteran's policy from state taxation despite the state's laws to the contrary. That being true, it would seem to follow that state community laws cannot fare any better. Moreover, it should be observed that in the instant case the insurance premiums were paid by deducting their amount from the pay of the veteran. In one aspect such pay represents a gift by the government rather than earnings, because the government can compel any person to serve in its armed services without pay (United States *v.* Williams, 302 U. S. 46). In the Williams case the court said:

> "Enlistment is more than a contract, it effects a change of status. It operates to emancipate minors at least to the extent that by enlistment they become bound to serve subject to rules governing enlisted men and entitled to have and freely to dispose of their pay."

In view of the foregoing decisions of the United States Supreme Court it follows that judgment must be entered for the defendant.

CLARENCE M. HANSON,
Judge.

APPENDIX C

No. 6061-BH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In the District Court of the United States, in and for the Southern District of California, Central Division.

Anna M. James, plaintiff, *v.* United States of America, William H. James, William H. James and Agnes James, as custodians for Bobby Ray James, a minor, Doe One, Doe Two and Doe Three, defendants.

The above entitled cause having come on regularly for trial on the 5th day of June, 1947, before the Honorable Ben Harrison, Judge of the above entitled Court, sitting without a jury, a jury having been expressly waived by all of the parties; * * * and the Court having heard all of the testimony and having examined the documentary evidence offered by the parties, and the cause having been submitted for decision, and the Court being fully advised in the premises, hereby makes it Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

The Court finds as follows:

I

The plaintiff, *Anna M. James*, is the widow of the insured soldier, *Robert L. James*. The defendant, the *United States of America* is the insurer, the defendant, *William H. James*, is the father of the deceased insured, *Agnes James* is the divorced wife of the deceased insured, *Robert L. James*, and the mother and the legal guardian of *Bobby Ray James*.

Agnes James has had her name changed to her present name, Diane C. James. That by stipulation of parties, the minor *Bobby Ray James* was made a defendant to said action.

II

That the plaintiff and the insured, Robert L. James, were married in the State of Arkansas on April 8, 1942, and that at all times thereafter until the death of the insured, they remained husband and wife.

That subsequent thereto, and on June 8, 1942, the insured Robert L. James, enlisted, or was inducted into active service of the United States Army and continued therein until his death on June 21, 1944.

That on July 8, 1942, the insured applied for and was granted a policy of United States government life insurance, No. N3-101-428 in the sum of $5,000.00, naming his principal beneficiary thereof, William H. James, described as father and as contingent beneficiary, Bobby Ray James, described as son. Said insurance contract became effective on August 1, 1942, and that the insured paid the premiums thereon by deductions from his service pay to and including the date of his death, therefore, said insurance contract was in full force and effect at said time.

That on the same day, that is to say, on July 8, 1942, the insured applied for and was granted an additional contract of National Service Life Insurance in the sum of $5,000.00, No. N3-111-499, effective August 1, 1942, naming as the principal beneficiary thereof, Anna M. James, described as wife, and as the contingent beneficiary, Bobby Ray James, described as son. That the insured paid the premiums on said policy during the period of service by deductions from his service pay to and including the date of death.

That on March 16, 1944, the insured filed a change of beneficiary on the official form provided by the War Department for that purpose, wherein he made his father, William H. James, as principal beneficiary, on a policy No. N3-101-428, and his son, Bobby Ray James, as the contingent beneficiary thereof, and on the second policy No. N3-111-499 he named as principal beneficiary, his son, Bobby Ray James,

and as contingent beneficiary, his wife, Mrs. Anna May James, the plaintiff herein; both policies were in full force and effect at the date of death. The numbers on said policies have apparently been transposed or used interchangeably, but the same does not affect them in any manner whatsoever.

That the insured was reported missing in action June 21, 1944, evidence of his death was received by the War Department and date of death was established as of June 21, 1944. See War Department Form No. 52-1, dated May 29, 1945.

* * * * * * *

IV

The Court further finds that prior to the date of decedent's marriage to the plaintiff, Anna M. James, the said decedent was, and had held his legal residence in the County of Dallas, State of Texas, and that said residence continued to be the residence of the decedent and plaintiff to the date of his death. That plaintiff is now a resident of the County of Los Angeles, State of California.

V

The Court further finds that, except as hereinafter qualified, the Community Property Laws of the State of Texas govern as to the management, control and disposition of the community property of the plaintiff and the decedent and that no fraud is alleged or proven to have been practiced either by the decedent against the plaintiff or by the plaintiff against the decedent.

VI

That the contracts of insurance sued upon herein were issued pursuant to the provisions of the National Service Life Insurance Act of 1940, as amended, and that the laws of the United States of America relating to such contracts of insurance are paramount in the naming of or changing of beneficiaries by an insured thereunder, and with respect to the disposition of the proceeds of said contracts of insurance, and that said National Service Life Insurance Act of

1940, as amended, and all regulations promulgated pursuant to the authority granted by said statute are not affected, modified or controlled by any state laws or regulations to the contrary.

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The Court makes the following Conclusions of Law from the foregoing facts:

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II

That the residence of the plaintiff and her deceased husband was, prior to his death, in the County of Dallas, State of Texas.

III

That under the contracts of insurance sued upon herein issued pursuant to the provisions of the National Service Life Insurance Act of 1940, as amended, the insured had the absolute right to make a designation or change of designation of beneficiary within the permitted class, without the consent of the plaintiff wife.

IV

That the right to name or change the beneficiary thus conferred by federal statute is not subject to and cannot be affected, modified or controlled by any state community property laws.

V

That the disposition of the proceeds or benefits of any contracts of insurance issued pursuant to the provisions of the National Service Life Insurance Act of 1940, as amended, is not subject to and cannot be controlled or governed by the community property laws of any state.

VI

That under the Community Property Laws of the State of Texas, where there is no intention on the part of the

husband to defraud a wife, the proceeds of a policy on the life of the husband vested in the beneficiary named in the policy upon the death of the insured husband even though the policy was taken out during coverture, by the husband, and the premiums were paid out of community funds.

VII

That the plaintiff is not entitled to any relief either as prayed for in the Complaint or as shown by the facts proven.

VIII

That neither the plaintiff's Complaint nor the facts proven state or prove a claim against any of the defendants herein upon which relief can be granted.

IX

That the plaintiff has no right or claim in or to either of the insurance policies sued on herein or in or to any of the proceeds thereof, save and except as the same may hereafter accrue to her as the contingent beneficiary where so named.

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Dated: June 16th, 1947.

[S.] BEN HARRISON,
United States District Judge.